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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations)
(Martin and Tiptonville, Tennessee)

MM Docket No. 96-204
RM-8876 and 9015

To: Chief, Mass Media Bureau

REPLY TO COUNTERPROPOSAL

Twin States Broadcasting, Inc. ("Twin States"), by its attorneys, hereby submits its Reply to Counterproposal in the above-captioned proceeding, stating as follows:

In a Counterproposal filed in the above-referenced proceeding on November 25, 1996, Thunderbolt Broadcasting Company ("TBC") requested the Commission to substitute Channel 247A for Channel 267C3 in Tiptonville, Tennessee, so that TBS could upgrade its Station WCMT-FM in Martin, Tennessee, from a Class A station on Channel 269A to a Class C3 facility on Channel 267C3. Twin States, which intends to construct and operate a new station in Tiptonville if the Class C3 allotment is retained, opposed the TBC Counterproposal in its Reply Comments of December 10, 1996.

By Public Notice, Report No. 2175, released February 3, 1997, the Commission gave notice that it would treat the TBC Counterproposal in the context of new rule making RM-9015. Twin States therefore is submitting the instant Reply to

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Counterproposal, which incorporates its earlier opposition to the
TBC proposal.

Respectfully submitted,
TWIN STATES BROADCASTING, INC.

By: 

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February 10, 1997

Its Attorneys

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Before the
Federal Communications Commission
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In the Matter of)
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RM-8876

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To: Chief, Mass Media Bureau

Federal Communications Commission
Office of Secretary

REPLY COMMENTS

Twin States Broadcasting, Inc. ("Twin States"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding, stating as follows:

Introduction

In its Notice of Proposed Rule Making, DA 96-1627, released October 4, 1996, the Commission proposed to delete FM Channel 267C3 at Tiptonville, Tennessee, absent an expression of interest in that now-vacant channel. On October 13, 1996, Twin States submitted a "Statement of Interest" which advised the Commission of Twin States's wish to construct and operate a Class C3 FM station at Tiptonville.¹

On November 25, 1996, Thunderbolt Broadcasting Company ("TBC") submitted its "Comments and Counterproposal" ("Counterproposal") which advocated: (a) the substitution of Channel 267C3 for 269A at Martin, Tennessee, so that it could upgrade its Station WCMT-FM; (b) the substitution of Channel 247A

¹Terry Hailey also has submitted "Comments" in which he asserts his intent to apply for a construction permit on Channel 267C3 at Tiptonville.

for Channel 267C3 at Tiptonville; and (c) the substitution of Channel 249C3 for 248C3 at Trenton, Tennessee.² Recognizing that the Commission will not adopt its Counterproposal if there is no interest expressed in the downgraded channel, TBC further asserts that it will not only reconstruct WCMT-FM on the upgraded channel in Martin,³ it also will apply for a permit to construct a Class A facility in Tiptonville. (Counterproposal, p. 3.)

Having asserted an interest in a Class A channel at Tiptonville, TBC then denigrates the size and significance of that community and its surrounding county, arguing that they are sparsely populated and support "fewer industries and many fewer businesses" than Martin and its surrounding county. (Counterproposal, p. 6.) TBC urges that WCMT-FM should be permitted to expand its service area, and Tiptonville should be allowed to have only a Class A facility, because Martin is the "larger, faster growing community" and is located in a more populous county. (Id.)

TBC further asserts that adoption of its proposal is the only means for WCMT-FM to upgrade its channel, that there would be a "dramatic increase" in the area and population it could serve, that Tiptonville already receives service from at least five other stations, and that there will be no loss or disruption

²Station WWEX(FM) presently operates on Channel 248C3 at Trenton, Tennessee.

³The allotment of Channel 267C3 at Martin would entail a site restriction 14.1 kilometers northwest of that community, so that WCMT-FM would have to relocate its transmitter site.

of existing service. (Counterproposal, pp. 5, 7.)

Argument

TBC's Counterproposal should not be adopted. As an initial matter, and as implicitly recognized by TBC's claim that TBC, itself, would apply to construct a Class A station at Tiptonville, no other party (including Twin States) can be expected to apply for a Tiptonville facility which is limited to Class A operation. Tiptonville is a community which deserves its own local outlet but, as reflected in TBC's Counterproposal, the town and the immediately surrounding area are too sparsely populated and too well served by other regional stations to support a station whose own coverage would be so restricted. Thus, wide area coverage is a prerequisite for service by a new station in that community. Twin States therefore does not intend to apply for the Class A channel suggested by TBC's Counterproposal, but will apply to construct a Class C3 station which will serve Tiptonville while also reaching an area wide enough to sustain its commercial operations. In view of Twin States's desire to construct a new station in Tiptonville on Channel 267C3 and its determination that it cannot reasonably construct and operate a Class A station in that community, the Commission should retain the current allotment.

In this connection, TBC's suggestion that it will construct both a Class A station to serve Tiptonville and an upgraded WCMT-FM must be regarded as a ingenious but unpersuasive ploy. Having minimized the importance of the population and commerce in and

around Tiptonville, and having made it obvious that it has no real interest in serving Tiptonville, TBC has made it clear that TBC has advanced its proposal only because it wishes to expand the service area of its station at Martin. This grudging, forced proposal is not the "expression of interest" in serving the community of license which is required by the Commission in its allotment proceedings. Indeed, the Commission's procedures provide no assurance that TBC will in fact apply for a Tiptonville facility once it has obtained an upgraded facility at Martin.

Furthermore, TBC operates Station WCMT in Martin, Tennessee, and Station WCDZ-FM in Dresden, Tennessee, in addition to WCMT-FM. All of these stations operate within the same region. Yet TBC, the only party which has indicated that it would apply for a Class A station in Tiptonville, has failed to show that its proposal would be permitted under the Commission's multiple ownership regulations. In these circumstances, the Commission should not allot Channel 269A to Tiptonville, where the only applicant would be a party which has not shown that it would be qualified to acquire that additional station.⁴

TBC's remaining arguments are both unpersuasive and unsupported. Whether Martin and its surrounding area are larger

⁴Twin States is aware that multiple ownership questions generally are not considered at the allotment stage. In this instance, however, where a petitioner alleges that the Commission should grant it an upgrade in one community solely because it will file an application in a second community, the petitioner's ability to file in the second community has become an issue of material, decisional significance in this rule making proceeding.

and faster growing than Tiptonville and its surrounding area is irrelevant: WCMT-FM already provides service to that community and area. Similarly, whether WCMT-FM would achieve a "dramatic increase" in the area and population served is irrelevant in the absence of data which compares its gain area and population with the area and population which would be served by a Class C3 station in lieu of a Class A station in Tiptonville. TBC's reference to the number of reception services in the Tiptonville area also is meaningless absent a showing of the existing reception services in WCMT-FM's proposed gain area. In short, the partial data supplied by TBC fails to support its claims that WCMT-FM, rather than a new station at Tiptonville, should operate as a Class C3 station. Absent evidence comparing gain areas, TBC's proposal to amend the existing Table of Allotments must fail.

In this regard, Twin States has today also been served with Reply Comments filed on behalf of TBC by its initial counsel in this proceeding. That pleading is notable for three reasons. First, TBC helps to establish that a low power station serving only Tiptonville and the immediately surrounding area would not be economically viable. (Reply, p. 6.) Second, TBC has announced that it would not necessarily reimburse WWEZ(FM) for the costs WWEZ(FM) would incur in changing its channel in the event TBC's proposal is adopted by the Commission. (Reply, p. 5 at note 5.) TBC instead would have that expense borne by whoever becomes the permittee of the Class A channel in Tiptonville. Yet

it would be TBC and its station WCMT-FM, not the Tiptonville permittee, who would obtain the benefit of that involuntary change by WVEZ(FM). TBC's failure to accept responsibility for covering the expenses which WVEZ(FM) will incur by virtue of the rule making instituted by TBC for TBC's sole benefit (and not the benefit of the ultimate Tiptonville permittee) mandates the denial of its rule making request.

Finally, TBC argues that the Commission will favor a plan whereby a Class A channel may be allotted to a community as its first local service while an existing facility may obtain an upgraded channel. (Reply, pp. 3-5.) Whether or not that statement may be accurate in some circumstances, it is not so in this case. Tiptonville has an allotted C3 channel and at least one party -- Twin States -- has stated that it intends to apply for such channel if it remains a Class C3 allotment. In these circumstances, the issue is not whether Tiptonville may obtain or retain a local Class A service while the Martin channel is upgraded. It is whether an existing allotment with an identifiable applicant should be downgraded in order for another allotment to be upgraded. TBC's request for such action on the part of the Commission must be denied where a prospective applicant for a Class C3 facility would be precluded, where the downgrade may result in the Tiptonville channel remaining vacant and where, in any event, TBC has made no showing with regard to the respective areas and populations which would lie between the Class A and Class C3 service contours of each allotment.

Conclusion

Twin States has expressed its interest in applying for a permit to construct and operate a new Class C3 station in Tiptonville, Tennessee. It does not intend to apply for a permit to instead construct a Class A station. TBC's suggestion that it will apply for a station it does not really want, its irrelevant arguments about the size and growth of the population within WCMT-FM's present community and service area, and its deficient claims about its proposed gain area which fail to compare such gains with the areas and populations in Tiptonville's proposed loss area simply do not support the channel allotment scheme it has requested. TBC's proposal therefore should be denied and Channel 267C3 should remain in Tiptonville, Tennessee.

Respectfully submitted,
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By:


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December 10, 1996

Its Attorneys

CERTIFICATE OF SERVICE

I, Yvette King, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I have caused a true copy of the foregoing "Reply Comments" to be sent via first-class, postage prepaid, U.S. mail to the following on the 10th day of December, 1996:

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Yvette King

*By Hand Delivery

CERTIFICATE OF SERVICE

I, Yvette King, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I have caused a true copy of the foregoing "Reply to Counterproposal" to be sent via first-class, postage prepaid, U.S. mail to the following on the 10th day of February, 1997:

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